



PRISONER OPERATIONS

9.1 Prisoner Custody

- A. Proponent:** Prisoner Operations Division (POD), 202-307-5100, Fax 202-305-9434
- B. Purpose:** The United States Marshals Service (USMS) is directed by the Department of Justice (DOJ) to collect deoxyribonucleic acid (DNA) samples from all individuals arrested by the USMS as a result of a Class I Warrant, as defined by the Investigative Operations Division (IOD); or, any individual arrested by an agency with which the USMS has entered into a Memorandum of Understanding/Agreement (MOU/MOA) in which the USMS has agreed to process (fingerprint and photograph) their arrests.
- C. Authority:** The Director's authority to issue written directives is derived from 28 USC 561(g) and 28 CFR 0.111. Specifically, 42 USC 14135a and 28 CFR 28 establish the USMS authority to collect DNA samples from all persons arrested by the USMS.
- D. Policy:** The United States Code, 42 USC 14135a, directs agencies of the United States that arrest or detain individuals, or that supervise individuals facing charges, to collect DNA samples from those individuals who are arrested, facing charges, or convicted, as well as from non-United States persons who are detained, under the authority of the United States. Under 28 CFR 28.12, unless otherwise directed by the Attorney General, the required scope of DNA sample collection is limited to individuals from whom an agency collects fingerprints. The Attorney General can also approve other limitations or exceptions. Agencies collecting DNA samples are directed to furnish the samples to the Federal Bureau of Investigation (FBI) Laboratory.
- E. Procedures:**
- 1. Responsibility:**
 - a. The USMS will ensure that DNA samples are obtained from all USMS arrestees taken into custody on USMS Class I warrants. Those samples will then be submitted to the FBI. This requirement does not include individuals apprehended in conjunction with state and local arrests who will not be prosecuted in United States District Court. (See USMS Policy Directive 8.1, Administration of Warrants and Related Criminal Investigations.)
 - b. The USMS is required to collect and submit DNA samples from state/local inmates who are temporarily being held in custody by the USMS through a Writ Ad Pros.
 - c. The USMS will collect and submit DNA for all state and local arrestees who are brought before a United States District Court to face federal charges and who are not sponsored by a federal law enforcement agency.
 - d. Criminal Summons: The USMS will collect and submit DNA samples from any prisoner that is summonsed by a United States District Court for the purpose of facing federal charges regardless of which federal law enforcement agency is the investigative agency.
 - e. Bureau of Indian Affairs (BIA): When the BIA makes an arrest and turns over custody of the detainee directly to the USMS for the purpose of a federal prosecution, the USMS will collect and submit DNA.
 - 2. Exemptions:** When federal prisoners are received from the custody of the United States Federal Bureau of Prisons (BOP), and considered to be in the temporary custody of the USMS (i.e., Writs, Attorney Special Requests, etc.), the USMS is not required to collect a DNA sample.

3. Memorandums of Understanding/Agreements:

- a. No USMS district may enter into a written agreement with another agency (federal, state, or local) or private organization to collect and/or submit DNA samples for that agency without receiving prior approval from POD.
- b. POD will seek concurrence from the Office of General Counsel (OGC) prior to approving any MOU/MOA. MOUs/MOAs will only be approved in extraordinary circumstances.
- c. District management, upon receiving prior authorization from POD, may direct district personnel to collect and submit DNA samples from individuals arrested by other agencies on a case-by-case basis.

4. District of Columbia (D.C.):

- a. District of Columbia/Superior Court (DC/SC): Generally, USMS personnel will not be required to collect or submit DNA samples from criminal defendants in DC/SC. DNA will be collected and submitted by D.C. Department of Corrections personnel as directed by D.C. code.
- b. District of Columbia District Court (D/DC): The USMS is responsible for collecting and submitting DNA samples from individuals arrested by the Metropolitan Police Department who have not had their cases adopted by any other federal agency, but will be prosecuted in D/DC.

5. Juveniles: DNA samples will be taken from juveniles in those cases where fingerprints are taken pursuant to USMS Policy Directive 9.1, Cellblock Operations/Processing Juveniles.

6. Collection and Submission of DNA samples: USMS personnel will use the sample collection kits provided by the FBI and adhere to the proper collection techniques as provided by POD training in conjunction with the FBI Laboratories Division.
USMS personnel will package each DNA sample taken according to the instructions included in the sample kit and mail it to the address included in the sample kit.

7. Refusal to submit to DNA sample collection:

- a. Any individual who refuses to cooperate in the collection of DNA should be advised that he/she faces criminal liability based on the refusal and that cooperation in DNA sample collection is a mandatory condition of pretrial release. (See 42 USC 14135a; 18 USC 3142.)
- b. USMS personnel are authorized as prescribed by USMS General Policy Directive 2.1, *Use of Nonlethal Force*, to use such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who is unwilling to submit to DNA collection.

F. Definitions:

DNA: Deoxyribonucleic acid (DNA) is a nucleic acid that contains the genetic instructions used in the development and functioning of all known living organisms and some viruses.

G. Cancellation: This is a new section added to Policy Directive 9.1.

H. Authorization and Date of Approval:

By Order of:

Effective Date:

/s/
John F. Clark
Director
U.S. Marshals Service

9/29/2009